



PATENT
Customer No. 22,852
Attorney Docket No. 05725.1209-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Pascale LAZZERI et al.

)

) Group Art Unit: 1751

Application No.: 10/614,092

)

) Examiner: Brian P. MRUK

Filing Date: July 8, 2003

)

For: DETERGENT COSMETIC
COMPOSITIONS COMPRISING AN
ANIONIC SURFACTANT, AN
AMPHOTERIC, CATIONIC, AND/OR
NONIONIC SURFACTANT, AND A
POLYSACCHARIDE, AND USE
THEREOF

) Confirmation No.: 8346

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action dated March 28, 2006, the period for response having been extended three months to May 30, 2006 (May 28 being a Sunday and Monday May 29 being a holiday), by the accompanying petition and fee and by the one-month extension and fee filed March 16, 2006, Applicants respectfully request reconsideration of this application in view of the following remarks. A Notice of Appeal is filed concurrently herewith.

Because this Request is limited to 5 pages, the arguments here do not represent all of Applicants' objections to the Action. Applicants reserve the right to raise additional arguments on appeal, including arguments not presented in this Request.

Rejections Under 35 U.S.C. §§102/103

Claims 1-66 stand rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as anticipated by or obvious over, French Patent Application No. 2,795,953, to Dubief ("Dubief") for the reasons of record.

Anticipation

The present claims (e.g., claim 1) recite a detergent and conditioning composition comprising, in a cosmetically acceptable medium, at least one anionic surfactant, at least one other surfactant chosen from amphoteric, nonionic, and cationic surfactants and at least one polysaccharide chosen from starch hydrolysates with a dextrose equivalent of less than 20 and from nonionic and anionic fructans. According to the Examiner, Dubief discloses on page 3, line 3, and page 43, line 7, a "cosmetic composition contain[ing] an inulin, which would include nonionic, anionic, and cationic inulins." Advisory Action at 2.

Applicants strongly disagree. Dubief is directed to cosmetic compositions comprising at least one conditioning agent and at least one *cationic* fructan in a cosmetically acceptable medium. Translation of Dubief, page 1, lines 4-7. In contrast to the Examiner's assertion, Dubief does not teach or suggest nonionic or anionic inulins. Instead, Dubief specifically discloses only *cationic* fructans. See, e.g., page 3 of the translation, lines 3-9. Dubief then generally defines fructans at page 3, lines 18-

26, of the translation, and notes, at page 4, lines 1-3, that inulin is a preferred fructan (this passage corresponds to page 3, line 3 of the French, relied on by the Examiner), but one must consider that these definitions are in the context of the previous disclosure, i.e., that the invention of Dubief relates to composition comprising at least one *cationic* fructan. Furthermore, the Examiner points to page 43, line 7, of the French, where claim 7 of the French text is set forth. The claim recites a composition according to claims 1 to 6, characterized in that the fructan is an inulin. Claim 1 (page 42, lines 1-3, of the French) recites a composition comprising “at least one fructan comprising at least one amine group.” Applicants point the Examiner to page 3, lines 7-8, of the French text (page 4, lines 4-5 of the translation), which defines “cationic fructans” as “fructans comprising at least one amine group.”

Thus it is clear from various portions of Dubief that only cationic fructans, and thus only cationic inulins, are disclosed therein. This disclosure simply does not meet the limitations of present claim 1, i.e., of “at least one polysaccharide chosen from (1) starch hydrolysates with a dextrose equivalent of less than 20 and from (2) nonionic and (3) anionic fructans.”

Further, in contrast to the Examiner’s assertion in the Final Office Action, inulin quaternized with 3-chloro-2-hydroxypropyltrimethylammonium (the cationic fructan used in Composition A of Example 1 of Dubief) is a polysaccharide, but is not a starch hydrolysate with a dextrose equivalent of less than 20 and thus, does not meet claim limitation (1) above. Specifically, as noted above, inulins are fructans, which are carbohydrate polymers comprised of fructose repeating units, but starches are carbohydrate polymers comprised of amylose and amylopectin. See definitions of

“fructan” and “inulin”, attached as Appendices 1 and 2 to the Response After Final, dated March 16, 2006. Again, the fructans taught by Dubief do not meet limitations (2) or (3) of the present claims because they are *cationic* fructans.

Finally, in the Final Office Action, the Examiner noted that present dependent claim 18 is recites that the at least one polysaccharide is an inulin. However, claim 18 depends from claim 1, and therefore has all of the limitations of the base claim. Because the fructans recited in claim 1 are limited to nonionic and anionic fructans and inulin is a fructan, the inulins of claim 18 are also limited to nonionic and anionic fructans. Accordingly, the cationic inulin disclosed by Dubief does not meet the limitations of claim 18.

For at least the reasons stated above, claims 1-66 are not anticipated by Dubief and withdrawal of the rejection of claims 1-66 under 102(b) is respectfully requested.

Obviousness

In addition to not being anticipated, claims 1-66 are not rendered obvious by Dubief. To make a *prima facie* case of obviousness, an Examiner must cite a reference or references which (a) disclose all the elements of the claimed invention, (b) suggest or motivate one of skill in the art to combine or modify those elements to yield the claimed combination, and (c) provide a reasonable expectation of success should the claimed combination be carried out. See, e.g., *Northern Telecom Inc. v. Datapoint Corp.*, 15 USPQ2d 1321, 1323 (Fed. Cir. 1990); and *In re Dow Chemical Co.*, 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988). Failure to establish any one of these three requirements precludes a finding of a *prima facie* case.

As stated above, Dubief does not disclose all of the elements of the claimed invention, i.e., specifically, Dubief does not disclose at least one polysaccharide chosen from (1) starch hydrolysates with a dextrose equivalent of less than 20 and from (2) nonionic fructans and (3) anionic fructans. Further, the Examiner has not provided any suggestion or motivation as to why one of skill in the art would have substituted the cationic fructans of Dubief with an anionic or nonionic fructan. Finally, the Examiner has not provided any reasonable expectation of success that the nonionic and anionic fructans would function in the compositions of Dubief the same way as the disclosed cationic fructans.

Accordingly, claims 1-66 are not obvious over Dubief and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested. In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any additional extensions of time required to enter this Request and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 24, 2006

By: 
Thalia V. Warnement
Reg. No. 39,064
Customer No. 22,852